



State of New Mexico

Judicial Compensation Commission

2014 Report

To the Legislative Finance Committee and
Department of Finance and Administration

Introduction

In 2005, the Legislature enacted Senate Bill 263 creating the Judicial Compensation Commission, an independent six-member Commission charged with recommending to the Legislative Finance Committee and the Department of Finance and Administration a compensation and benefits plan for New Mexico judges.

The Commission is currently comprised of:

David Herring, Dean and Professor of Law, University of New Mexico School of Law, statutory member designated as the chair of the Commission;

Erika E. Anderson, President of the New Mexico State Bar; statutory member;

William F. Fulginiti, Executive Director of the New Mexico Municipal League, appointed by the Chief Justice of the New Mexico Supreme Court;

Carlo Lucero, appointed by the Governor of New Mexico;

Roxanna M. Knight, appointed by the Speaker of the New Mexico House of Representatives; and

Debra Seligman, appointed by the President Pro Tempore of the New Mexico Senate.

The Administrative Office of the Courts provides support to the Commission.

On Tuesday, July 8, 2014, the Commission met to execute its statutory responsibility. After careful consideration, the members of the Commission unanimously adopted the recommendations set forth in this report.

Since its inception, the Commission has found that judicial salaries in New Mexico are among the very lowest in the region. Based on national data, they are also among the lowest in the United States. The comparisons suffer further when the cost of living is considered because costs in New Mexico are about even with the national average, while judges with comparable salaries are generally found in states with a lower cost of living. To attract high quality judges to the bench in New Mexico and to encourage them to remain on the bench, the Commission has consistently asked that these disparities be addressed.

The New Mexico Judicial Compensation Commission must “report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices” annually. NMSA 1978 § 34-1-10(G).

Judicial compensation in New Mexico is set through a statutory formula based on the salary the legislature sets for the Justices of the Supreme Court. NMSA 1978 § 34-1-9. The Chief Justice salary is set \$2,000 higher than the salary of a Justice. Each Judge of the Court of Appeals earns a salary equal to 95% of the salary of a Supreme Court Justice. Each District Court Judge earns a salary equal to 95% of the salary of a Judge of the Court of Appeals. Each Metropolitan Court Judge earns a salary equal to 95% of the salary of a Judge of the District Court. Each Magistrate earns a salary that is 75% of the salary of Metropolitan Court Judge. Salaries for Chief Judges are set according to the same general formula, based on the Chief Justice’s salary.

Judicial salaries are not adjusted for location. A judge of the same rank earns the same amount in any community in the state, regardless of size, docket or cost of living. Judicial salaries likewise are not adjusted for seniority. A judge who has served for 20 years in a particular rank earns the same salary as a new judge.

New Mexico
Supreme Court
Justice Salaries
2008—2014

2008	\$123,691.36
2009	\$123,691.36
2010	\$123,691.36
2011	\$123,691.36
2012	\$123,691.36
2013	\$124,927.91
2014	\$131,174.31

Update on 2014 Legislative Session

In its report in August 2013, the Judicial Compensation Commission made the following recommendations on judicial compensation for the 2014 legislative session: Increase Justice pay to \$137,655, an increase of approximately 11%. The resulting salary would approximate the salary of a Justice in Oklahoma, a western state with a large metropolitan area (Oklahoma City), significant Native American populations and reservations, and large tracts of rural land. New Mexico has Albuquerque, many pueblos and reservations, and large tracts of rural area. The cost-of-living in Oklahoma is 5% lower than in New Mexico, where in 2014 the salary of a district court judge ranked last out of 51 in the United States.

The Commission's 2013 report also recommended the adoption of judicial pension reform legislation that addresses funding issues in a manner similar to the reforms adopted in SB25 during the 2013 legislative session. After reviewing judicial retirement data in other states, the Commission concluded, "By any measure, not only is the compensation for New Mexico judges significantly lower than the comparison mountain states, the retirement benefits are at best in the lower range of average while the percentage of salary contributed by the judges is very high and the amount contributed by the State is very low."

Judicial Compensation

During the 2014 legislative session, House Bill 2, which became Senate Bill 313, increased judicial salaries by a total of 8%. However, the increase was in two different parts of the bill, with a 5% increase in Section 4 (court base budgets) and the other 3% stated in a line appropriation in Section 8.

Governor Martinez stated her intent to veto the entire 8% increase and exercised the line item veto on Section 8, stating, "though I would have supported a more modest 3% increase in pay for judges that would have put them on par with other pay raises in the budget, I cannot support the dramatic 8% raise requested in the budget. This would have amounted to nearly three times the raise that teachers received, in a year in which taxpayers are being asked to contribute additional funds to shore up the judicial and magistrate retirement systems, in addition to five new judgeships throughout New Mexico."

Legislators as well as District, Metropolitan and Magistrate judges challenged the Governor's view that the veto in Section 8 also eliminated judicial pay increases in Section 4. The Supreme Court, with four retired judges who could not benefit from the outcome of the litigation sitting with Justice Bosson, ruled unanimously that the veto only eliminated the 3% in Section 8 and that the 5% increase in Section 4 remained effective. This ruling resulted in a pay increase of 5% for all active judges.

Judicial Retirement

Four bills also addressed judicial retirement funding during the 2014 legislative session. For magistrates who are members of the Magistrate Retirement Account (MRA), Representative Jim Trujillo introduced HB 216 and Senator Sue Wilson Beffort introduced SB 160. This legislation increased contributions to the MRA by the state and judges, made adjustments to the cost-of-living increases for retirees, and altered beneficiary provisions while reducing annual service credit for future judges. The identical bills passed and the governor signed both.

For district, metropolitan and appellate judges who are members of the Judicial Retirement Account (JRA), Representative Lucky Varela introduced HB 33 to increase contributions to the JRA by the state and judges, make adjustments to the cost-of-living increases for retirees, and alter beneficiary provisions while reducing annual service credit for future judges. The governor also signed HB 33.

As a result of these three legislative actions, both the MRA and JRA are projected to reverse the downward trend that saw both funds less than 60% funded. Instead, both funds are projected to be at least 100% funded in the future. Support from judges and from the Public Employees Retirement Administration made the success of this legislation possible.

Senator Stuart Ingle and Representative Lucky Varela introduced the fourth bill with an impact on retirement, SB 304. This bill redirected part of the tax revenue that funds legislative retirement from out-of-state oil taxes to the MRA and JRA. The legislative retirement fund is funded more than 100% and would have continued to be more than fully funded under the provisions of SB 304. The amount redirected, \$1.2 million each year for three years, would have accelerated the improvement of the MRA and JRA toward 100% funding. SB 304 passed the legislature but Governor Martinez vetoed the legislation, stating this funding was not needed for judicial retirement and could be better redirected to other needs.

2014 Salary Recommendation

The Commission reiterates the recommendation made last year. The salary of a Supreme Court Justice should approximate the \$137,655 salary of a Justice in Oklahoma¹. The 5% increase provided to judges in FY 2015 increased Justice pay to \$131,174. Comparing this salary with the salaries of Justices in other states as of January 1, 2014, the new salary for New Mexico Justices would only improve to a ranking of 46 out of 51. The 5% increase makes the salary of a trial judge in district court in New Mexico \$118,384. However, other states also increased the salaries of trial judges so that New Mexico trial judges rank 50 out of 51 and will drop to last, 51 out of 51, when the salary for Montana trial judges rises above \$126,000 on July 1, 2015.

Although Oklahoma has not increased Justice pay, its Legislature enacted HJR 1090 and Governor Fallin signed the bill, increasing trial judge salaries to \$131,185. This compensation level is \$12,801 (+10.81%) higher than New Mexico trial judges. A similar increase in Justice salaries would raise pay to \$145,354. Such a salary would still lag by \$14,339 (8.99%) the national average salary for Justices of \$159,693.

The Commission remains convinced that New Mexico judicial salaries are insufficient. This remains true after the 5% increase provided for FY 2015. Applicants to Judicial Nominating Commissions around the state continue to lack diversity, especially lacking applicants with private practice experience in civil law.

In general, candidates are highly qualified in criminal law but lack experience and depth in the civil cases that resolve business disputes, contracts, and torts. As this trend continues, New Mexico judges will increasingly lack judges with broad civil law experience. Nominating Commissions continue to receive responses from potential candidates with civil law experience that serving on the bench is attractive but the salary does not permit them to apply.

In the 2015 legislative session, the Commission recommends continuation of the important step taken in the 2014 session through an increase of 5% to approximate the Oklahoma Justice salary, resulting in the following pay:

	FY 2015 Salary	5% Increase in FY 2016	Cost of Increase
Justice	\$131,174	\$137,733	\$32,795
Court of Appeals	\$124,616	\$130,847	\$62,310
District Court	\$118,384	\$124,303	\$550,467
Metropolitan Court	\$112,466	\$118,089	\$106,837
Magistrate Court	\$84,349	\$88,566	\$282,539
Chief/Presiding Costs			\$35,510
Total Cost of 5% Increase = \$1,070,458			

1. Oklahoma is a western state with a large metropolitan area (Oklahoma City), significant Native American populations and reservations, and large tracts of rural land. New Mexico has Albuquerque, many pueblos and reservations, and large tracts of rural area. While the median household income in the United States is \$52,762, in Oklahoma it is \$44,287 and in New Mexico it is slightly higher at \$44,631. As reported by the NCSC the cost-of-living in New Mexico is 5% greater than in Oklahoma (103.62% NM compared to 98.03% in OK).

As noted above, even with the 5% increase for FY 2015, New Mexico's national salary ranking continues at 46th or below in judicial salaries at all levels. In addition, judicial compensation in New Mexico continues to lag behind the pay of employees in state and local government in New Mexico. Although a Justice of the Supreme Court must win statewide election to an office that not only directs the Judicial Branch of government but also decides the most critical legal issues facing the people of New Mexico, many state and local employees are paid more than a Justice of the Supreme Court. Administrators in the other branches of government and in counties and cities in New Mexico receive higher compensation than a Justice of the Supreme Court.

For example, **the Chief Administrative Officer for the City of Albuquerque is paid \$52,000 more than the Chief Justice of the New Mexico Supreme Court and the Bernalillo County Attorney in Albuquerque is paid \$31,000 per year more than trial judges in Albuquerque. The Las Cruces City Administrator is paid \$39,736 more than the Chief Justice of the Supreme Court.** A New Mexico District Court Trial Judge in Santa Fe is paid less than the Santa Fe City Manager, Santa Fe County Manager, Santa Fe County Public Works Department Director, and substantially less than the local school superintendent. The Legislature should implement the recommendation of the Commission to modestly increase judicial compensation by 5% in New Mexico.

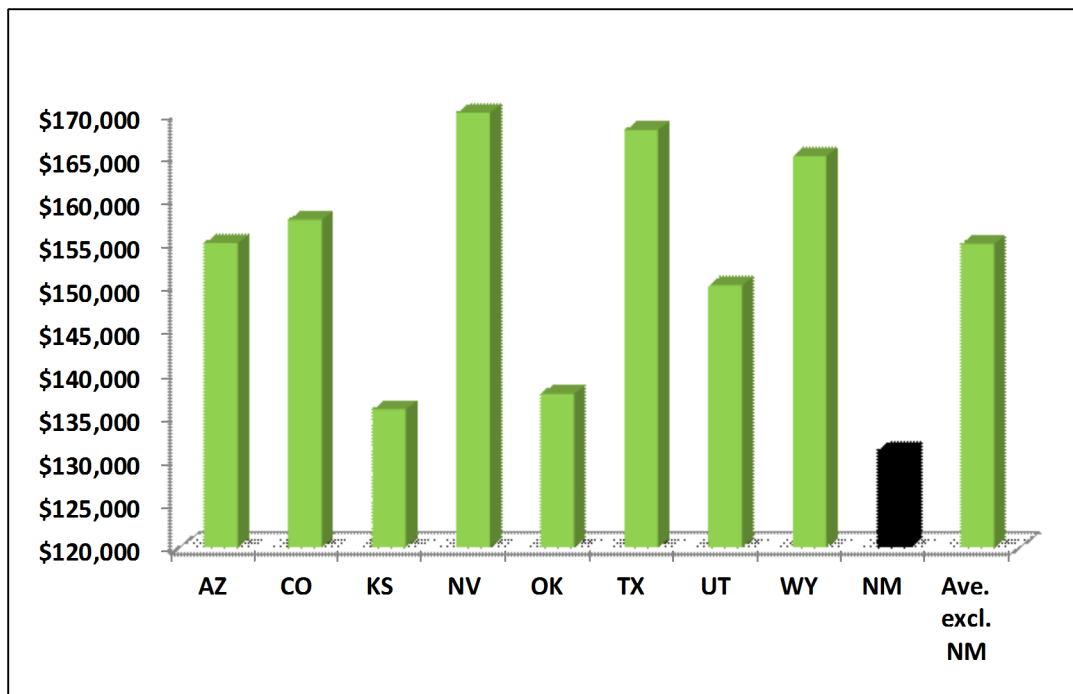
National Salary Comparison (after New Mexico 5% increase FY 2015)²

- New Mexico Supreme Court Justice salary ranks 46 out of 51.
- New Mexico Intermediate Appellate Court (Court of Appeals) Judge salary ranks 37 out of 39 (not all states have an Intermediate Appellate Court).
- New Mexico general-jurisdiction district trial court judge salary ranks 50 out of 51. New Mexico trial court judges will have the lowest salary, 51 out of 51, on July 1, 2015, when trial court judge salaries in Montana rise above \$126,000.
- States that rank lower than New Mexico for judicial salaries usually have a lower cost-of-living than New Mexico, where the cost-of-living index is 103.62% of the national average.
- The mean national salary of a Supreme Court Justice is \$159,163 and the median is \$159,064; the New Mexico salary is \$131,174 as of July 1, 2014. New Mexico Justice pay is 18% below the national average.

2. Data is from the *Survey of Judicial Salaries* published in July by the National Center for State Courts based on salaries effective January 1 of each year. The *Survey* is at: <http://www.ncsc.org/judicialsalaries>. Information for July 1, 2014 provided by NCSC.

Regional Salary Comparison

The Commission has consistently examined judicial salaries in New Mexico relative to those in the eight western region states of Arizona, Colorado, Kansas, Nevada, Oklahoma, Texas, Utah and Wyoming. As has been true for a long time, New Mexico judicial salaries rank last among all nine states. Excluding New Mexico, the average salary for a Supreme Court Justice in these eight mountain west states as of July 1, 2014 is \$154,927. The average in the five states that geographically touch New Mexico (AZ, CO, OK, TX, UT) is \$153,703.



Supreme Court Justice Salaries as of July 1, 2014 in Western Comparison States

AZ	\$ 155,000
CO	\$ 157,710
KS	\$ 135,905
NV	\$ 170,000
OK	\$ 137,655
TX	\$ 168,000
UT	\$ 150,150
WY	\$ 165,000
NM	\$ 131,174
Average excluding NM: \$154,927	

State and Local Salary Comparison³

The pay of a New Mexico Supreme Court Justice, the highest ranking position in the Judicial Branch, elected by a statewide electorate, also suffers by comparison with state and local employees as well as university employees.

July 1, 2014 salaries for New Mexico judges and justices:

New Mexico Supreme Court Chief Justice	\$133,174
New Mexico Supreme Court Justice	\$131,174
New Mexico Court of Appeals Judge	\$124,616
New Mexico District Court Trial Judge	\$118,384
New Mexico Metropolitan Court Judge	\$112,466
New Mexico Magistrate Court Judge	\$84,349

Salaries for select state and local government and university employees that exceed Justice pay (\$131,174):

President, New Mexico State University	\$385,000
President, University of New Mexico	\$362,136
Superintendent, Albuquerque Public Schools	\$250,000
University Counsel, University of New Mexico	\$246,000
Dean, UNM School of Law	\$236,900
City of Albuquerque, Chief Administrative Officer	\$185,411
Santa Fe Public Schools, Superintendent	\$180,000
County of Los Alamos, County Administrator	\$176,459
City of Las Cruces, City Administrator	\$172,910
County of Santa Fe, County Manager	\$166,021
Executive Director, PERA	\$163,030
City of Albuquerque, Chief of Police	\$162,739

3. Data is from 2014 salaries reported on state and local government and university websites, newspaper reports, or as a result of requests made under the Inspection of Public Records Act.

Bernalillo County, County Manager	\$158,000
County of Los Alamos, Deputy Administrator/CFO	\$153,756
LFC Executive Director	\$153,717
City of Rio Rancho, City Manager	\$153,005
County Attorney, Bernalillo County	\$150,000
ERB Executive Director	\$149,287
County of Los Alamos, County Attorney	\$144,269
City of Santa Fe, City Manager	\$140,005
Governor's Chief of Staff	\$136,350
City of Albuquerque, City Attorney	\$135,242

Salaries of select state and local government employees that exceed pay (\$118,384) for district court trial judges:

Legislative Council Service, Executive Director	\$130,037
Dona Ana County, County Manager	\$130,000
Executive Director, NM Spaceport Authority	\$126,250
Secretary, NM Tourism Department	\$126,250
LESC, Executive Director	\$124,836
Santa Fe County Public Works Dept. Director	\$120,065
City of Las Cruces, City Attorney	\$118,587

“A New Mexico District Court Trial Judge in Santa Fe is paid less than the Santa Fe City Manager, Santa Fe County Manager, Santa Fe County Public Works Department Director, and substantially less than the local school superintendent.”

2014 Recommendation to Reform Judicial Retirement Funding

In addition to salary, the Commission examined retirement benefits, including employer and employee contributions, for judges in the eight mountain west states. With changes made in the 2014 legislative session, New Mexico judges pay a higher percentage of salary in contributions than in those states. The State of New Mexico still makes contributions to judicial retirement at the lower end of the range of contribution rates for these states. For example, Oklahoma is required by statute to increase the employer contribution to 22% by 2019. New Mexico contributes 15% to judicial retirement.

Not only is the compensation for New Mexico judges significantly lower than the comparison mountain states, the retirement benefits are at best in the lower range of average while the percentage of salary contributed by the judges is very high and the amount contributed by the State is relatively low. The 2014 legislation addresses the significant under funding of judicial retirement, given concerns about the low level of judicial compensation and the challenges of attracting diverse candidates to judgeships. It may be necessary to revisit judicial retirement funding and benefits in the future. For now, the 2014 reforms need an opportunity to have an impact on the adequacy of funding for judicial retirement.

The Commission recognizes that additional legislation to address other aspects of judicial retirement is neither likely nor advisable so soon after the very significant 2014 legislation. Going forward, the Commission recommends that the Legislature continue to consider meeting the state's funding obligations without reliance on docket fees, and in the future consider whether improved retirement benefits may help attract a broader diversity of judicial candidates.

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